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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

MARTIN TOCCI,

Case No. 10-cv-01324-KI

Plaintiff,

v.

FIRST DECLARATION OF MARJORIE  
H. BORDERS

JANET NAPOLITANO,  
Secretary of Department of Homeland Security, *et*  
*al.*,

Defendant.

I, Marjorie H. Borders, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury

that the following is true and correct:

1. My name is Marjorie H. Borders. The following statements are based on my personal knowledge and are made in support of the Transportation Security Administration's (TSA) motion to dismiss the complaint.
2. I serve as the Compliance Branch Chief, Compliance and Control Division Headquarters, United States Equal Employment Opportunity Commission ("EEOC") Office of Federal Operations, Federal Sector Programs, 131 M Street, NW, Washington, D.C. 20507. I have been in this and similar positions in this office since March 28, 1993.
3. Under the Age Discrimination in Employment Act ("ADEA"), an individual who wishes to file a lawsuit against a federal agency must first either: (a) file an administrative complaint with the agency and exhaust those administrative remedies; or (b) notify the EEOC of his or her intent to proceed directly to federal court. *See* 29 U.S.C. § 1614.201(a).
4. A search was conducted of the ADEA notice correspondence files maintained by Federal Sector Programs. Those files are maintained chronologically and accessed through an alphabetical electronic database. ADEA notice files contain notices of intent to sue federal agencies under the ADEA, and related correspondence from the EEOC to federal agencies and claimants, on notices filed directly with Federal Sector Programs, or notices forwarded to Federal Sector Programs by an EEOC field office, where a notice is erroneously filed with a field office. Our review of those files did not reveal any notice of intent to sue the United States Department of Homeland Security or the Transportation Security Administration filed by Martin Tocci, the Plaintiff in the above-captioned civil action.
5. We also reviewed the general correspondence files maintained in the Office of Federal Operations on the Plaintiff, Martin Tocci, and did not locate any notice of intent to sue the

United States Department of Homeland Security or the Transportation Security Administration  
filed by the Plaintiff, Martin Tocci.

Executed this 9<sup>th</sup> day of March, 2011.

  
MARJORIE H. BORDERS